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New York State Department of Environmental Conservation

MEMORANDUM

TO: Distribution  
FROM: Dolores Tuohy  
SUBJECT: Roth Bros. Corrective Action Order on Consent - Region 7  
DATE: October 24, 1994

fyf  
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10/26/94  
2014  
DIVISION OF HAZARDOUS  
SUBSTANCES REGULATION

Attached, for your information, is a copy of an Order on Consent committing Roth Bros. Smelting Corp., located in East Syracuse, New York, to undertake a RCRA Corrective Action Program at its facility. It was executed by Commissioner Langdon Marsh on October 21, 1994.

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DIRECTOR'S OFFICE  
DIVISION OF HAZARDOUS  
SUBSTANCES REGULATION

FILE

STATE OF NEW YORK: DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Development and Implementation  
of a Remedial Program for  
a Resource Conservation and Recovery  
Act ("RCRA") Facility, Under Article 27,  
Title 9, and Article 71, Title 27 of the  
Environmental Conservation Law  
of the State of New York by

ORDER  
ON  
CONSENT

INDEX # C7-0001-94-10

Roth Bros. Smelting Corp.,  
Respondent.

EPA ID NO. NYDO00697086

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WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 9 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Industrial Hazardous Waste Management." This Order is entered into pursuant to the Department's authority under, inter alia, ECL Article 27, Title 9 and ECL §71-2727(3).

2. Roth Bros. Smelting Corp. ("Roth Bros.") operates a facility located at 6223 Thompson Road in East Syracuse, New York (the "Facility"). Roth Bros.' operations at the Facility formerly involved storage of hazardous waste. The Department granted Roth Bros. a Part 373 Permit on March 30, 1987. No EPA permit was issued. On September 30, 1993, the Department accepted Roth Bros.' closure certification for the last of Roth Bros.' regulated waste storage units. The Facility's 6 NYCRR Part 373 Permit for storage of hazardous waste has expired.

3. One of the buildings located at the Facility is known as Plant 2. Certain soils in the vicinity of Plant 2 are contaminated by lead (up to 40,000 ppm total lead), cadmium, and PCBs (up to 250 ppm total).

4. Roth Bros. has conducted a RCRA Facility Investigation and a Corrective Measures Study addressing the environmental conditions described in paragraph 3, above.

5. On July 20, 1994, the Department issued a Draft Statement of Basis describing the corrective actions selected by the Department to remedy the environmental conditions described in paragraph 3, above. Following a period of public comment, the Department issued a final Statement of Basis (the "Statement of Basis") on October 1, 1994, 1994. The Statement of Basis selected a final corrective action consisting of polysilicate fixation stabilization of

contaminated soils. The Statement of Basis also recommends groundwater monitoring in order to assess the performance of the corrective action. ↙

6. Roth Bros. submitted to the Department a work plan for implementation of the corrective actions selected by the Department in the Statement of Basis. The work plan, entitled "Corrective Measures Implementation Plan, Roth Bros. Smelting Corporation, East Syracuse, New York" and dated September, 1994, was approved conditionally by the Department by letter dated October 17, 1994. The work plan received together with the Department's conditional approval letter shall be deemed the Department approved Corrective Measures Implementation Plan ("CMI Plan"). A copy of the CMI Plan and conditioned approval letter are attached to this Order as Appendices "A" and "B" and made an enforceable part of this Order.

7. Pursuant to ECL §71-2727(3), the Commissioner of the Department (the "Commissioner") may issue Orders "requiring corrective action, including corrective action beyond the facility boundary where necessary to protect human health and the environment, for all releases of hazardous waste or constituents from any solid waste management unit at any treatment, storage or disposal facility which is either permitted or seeking a permit under title 7 or 9 of article 27. . . ."

8. The Department and Roth Bros. agree that the goals of this Order are for Roth Bros. to (i) implement a RCRA corrective action program which shall include implementation of the CMI Plan and development and implementation of a post-remedial operation and maintenance plan; (ii) provide post-remedial financial assurances and (iii) reimburse the State's administrative costs.

9. Roth Bros., having waived Roth Bros.' right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. Roth Bros. consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

10. Roth Bros.' consent to this Order shall not constitute an admission by Roth Bros. of any liability or obligation owed by Roth Bros. to the Department or to any other person or party, except for the obligation to comply with this Order. Roth Bros. does not admit any factual matter set forth in this Order or in the work plan contained in Appendix "A" of this Order. By signing this Order, Roth Bros. does not admit or acknowledge any liability or fault with respect to any matter arising out of or relating to conditions at the Site and does not waive and expressly reserves any claim or defense that might have been raised in any other administrative or judicial proceeding brought by the Department, USEPA or any other governmental agency or private person. The terms and conditions of this Order shall not be admitted into evidence or used in any way, directly or indirectly, in any administrative or judicial proceeding or otherwise against Roth Bros. for any purpose other than in proceedings by the Department to enforce the terms of this Order. Nothing contained in this provision shall preclude the Department from using any data or information obtained as a result of work performed pursuant to this Order in any administrative or judicial proceedings.

11. With the exception of the obligation to comply with this Order, Roth Bros. expressly reserves any legal and equitable rights and defenses.

12. With the exception of the payments described in Subparagraph VII.A, no payment made by Roth Bros. to pay for and implement the work or any other activities required under this Order shall be deemed to be a fine, penalty, or monetary sanction.

13. This Order provides for the construction of a Corrective Action Management Unit at the Facility. The Corrective Action Management Unit is described in Appendix "C" of this Order.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Implementation of Remedial Action

Roth Bros. shall implement the CMI Plan in accordance with the schedule contained therein and the terms of this Order.

II. Post-remedial Submittal

Within 60 days following completion of final soil grading at the "Corrective Action Management Unit" referenced in the Statement of Basis ("CAMU"), Roth Bros. shall submit to the Department a detailed post-remedial operation and maintenance plan ("O & M Plan"); as-built drawings; a final engineering report; and a certification that the CMI Plan was implemented and that all construction activities were completed in accordance with the Department-approved CMI Plan. The O & M Plan, as-built drawings, final engineering report, and certification must be prepared, signed and sealed by a professional engineer.

II-A. Treatment Standard

Waste at the Roth Bros. Facility which has been treated in implementing the Department approved CMI Plan shall be considered acceptably treated when the treated waste confirmation sampling program described in the Department approved CMI Plan indicates with reasonable confidence that the concentrations in extract collected in accordance with the Toxicity Characteristic Leaching Procedure (TCLP) for the sample population are statistically less than the site treatment standard of 2.5 mg/liter of lead.

For purposes of this Order, "statistically less than the site treatment standard" shall mean 95% confidence that 95% of the treated waste material confirmation sample population is less than the treatment standard. Roth Bros.' professional engineer shall include, as part of the post-remedial submittal referenced in Paragraph II, a statement developed in accordance with generally accepted technical and scientific principles regarding the statistical evaluation of the waste material confirmation sample population and whether the population results are statistically less than the treatment standard. The statistical evaluation methodology shall be a parametric test for percentiles based on tolerance levels, which assumes the confirmation sample population will have a normal distribution, including a transformed log normal distribution.



If the Department determines from the statement prepared by Roth Bros.' professional engineer that the waste material confirmation population sample results are not statistically less than the site treatment standard, then Roth Bros. shall undertake additional work by one of the following methods and shall proceed within a reasonable period of time in accordance with a mutually agreed schedule which shall be incorporated into and become an enforceable part of this Order:

Option 1: Retreat waste material which confirmation sampling results indicates may exceed the site treatment standard ("Affected Material"). Roth Bros. shall be required to retreat Affected Material until its professional engineer is able to certify that a revised statistical evaluation of the waste confirmation sample population shows that the results are statistically less than the site treatment standard; or

Option 2: Dispose of sufficient Affected Material at an appropriate off-site disposal facility so that the statistical evaluation of the confirmation sample population results for waste material remaining in the CAMU is statistically less than the site treatment standard; or

Option 3: Enhance the final cover over the portion of the CAMU receiving the affected material by including a low permeability geomembrane or other acceptable material in the final cover otherwise specified in the Department approved by the CMI Plan; or

Option 4: Manage or treat the affected material by an alternate means approved by the Department.

Roth Bros. shall notify the Department, in writing, prior to implementing Options 1 or 2. If Roth Bros. elects to implement Options 3 or 4, Roth Bros. shall obtain prior approval of the Department of the means of implementing the method.

### III. Implementation of O & M Plan

Upon the Department's approval of the O & M Plan, Roth Bros. shall implement the O & M Plan in accordance with the requirements of the Department-approved O & M Plan and the terms of this Order.

### IV. Financial Assurances

Within thirty days following the Department's approval of the O & M Plan, Roth Bros. shall provide to the Department a cost estimate for the O & M Plan and shall provide financial assurance for such requirements pursuant to one of the methods set forth in 6 NYCRR 373-2.8(f).

### V. Progress Reports

Commencing at the time of Roth Bros.' initial implementation of the O & M Plan, Roth Bros. shall periodically submit to the parties identified in Subparagraph XIII.A, in the numbers specified therein, copies of written progress reports that:

A. describe Roth Bros.' implementation of the O & M plan during the previous reporting period;

B. include all results of sampling and tests and all other data received or generated by Roth Bros. or its contractors or agents in complying with this Order during the previous reporting period, including quality assurance/quality control information;

C. describe all actions required of Roth Bros. by this Order, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next reporting period and provide other information relating to its progress in carrying out its obligations under this Order; and

D. include any modifications to any work plans that Roth Bros. has proposed to the Department or that the Department has approved.

Roth Bros. shall submit progress reports on a quarterly basis unless a different reporting period is agreed upon by the Department and Roth Bros.

#### VI. Review of Submittals

A. 1. The Department shall review each of the submittals Roth Bros. makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with the CMI Plan, this Order and generally accepted technical and scientific principles. The Department shall notify Roth Bros. in writing of its approval or disapproval of the submittal. The Department shall make efforts to notify Roth Bros. within 60 days of receipt of the submittal.

2. a. If the Department disapproves a submittal, it shall so notify Roth Bros. in writing and shall specify the reasons for its disapproval. Within 30 days after receiving written notice that Roth Bros.' submittal has been disapproved, Roth Bros. shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Roth Bros. in writing of its approval or disapproval of the revised submittal. The Department shall make efforts to make the determination of approval or disapproval within 60 days of receipt of the revised submittal. If the Department disapproves the revised submittal, Roth Bros. shall be in violation of this Order unless, within 10 days of receipt of the notice of disapproval, Roth Bros. has invoked dispute resolution in accordance with Paragraph VI-A herein. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. Roth Bros. shall modify and/or amplify and expand a submittal (undertake "additional work") upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that, in accordance with generally accepted scientific principles and practices, further work is necessary.

Upon receipt of the Department's demand for additional work, Roth Bros. shall proceed with such in accordance with a mutually agreed schedule unless, within 15 days after receipt of the demand, it objects to the Department in writing and invokes dispute resolution in accordance with Paragraph VI-A herein.

#### VI-A Dispute Resolution

Upon the timely written request of Roth Bros., based upon a dispute regarding the terms of a revised submittal or the Department's demand for additional work (Paragraph VI.B) or the payment of administrative costs, the Department shall provide Roth Bros. an opportunity to meet with the Director of the Division responsible for the primary oversight of Roth Bros.' implementation of this Order ("the Director") to discuss the Department's objections and/or the Department's demands for additional work. Roth Bros. shall be available to meet within a reasonable time after making its request to meet. At the meeting, Roth Bros. shall be given an opportunity to present its responses to the Department's objections and/or demands, and the Director shall have the authority to modify and/or withdraw such objections and/or demands. The Department shall notify Roth Bros., in writing, of its specific comments, as modified, and/or its revised demands as soon as reasonably practicable after the meeting.

Upon receipt of such notification regarding a submittal, Roth Bros. shall revise the submittal in accordance with the Department's specific comments, as modified, and shall submit a revised submittal. Upon receipt of such notification regarding demands for additional work, Roth Bros. shall commence the additional work in accordance with the revised demands. The period of time for revision or commencement of additional work shall be determined during the meeting with the Director.

If the Department disapproves the revised submittal or <sup>Roth Bros.</sup> fails to undertake additional work in accordance with the Department's revised demands, Roth Bros. shall be in violation of this Order and the ECL.

#### VII. Penalties

A. Commencing at the time of Roth Bros.' initial implementation of the O & M Plan, Roth Bros. shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that Roth Bros. is thereafter in violation of the terms of this Order. All penalties begin to accrue on the first day Roth Bros. is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within 15 days after receipt of notification from the Department assessing the penalties. If such payment is not received within 15 days after Roth Bros. receives such notification from the Department, interest shall be payable at the annual rate of nine per centum on the overdue amount from the day on which it



was due through, and including, date of payment. Penalties shall be paid by certified check or money order, made payable to "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-5500. Payment of the penalties shall not in any way alter Roth Bros.' obligation to complete performance under the terms of this Order. Stipulated penalties calculated pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15th day	\$ 5,000
16th through 30th day	\$ 10,000
31st day and thereafter	\$ 15,000

B. Roth Bros. shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or an unforeseeable natural event arising exclusively from natural causes which the exercise of ordinary human prudence by Roth Bros. could not have prevented, or other condition beyond the control of Roth Bros. Roth Bros. shall promptly notify the Department in writing. Roth Bros. shall include in such notice the measures taken and to be taken by Roth Bros. to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice promptly constitutes a waiver of any claim that a delay is not subject to penalties. Roth Bros. shall have the burden of proving that an event is a defense to compliance with this Order pursuant to subparagraph X.B.

#### VIII. Entry upon Facility

Roth Bros. hereby consents to the entry upon the Facility or areas in the vicinity of the Facility which may be under the control of Roth Bros. by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Roth Bros.' compliance with this Order. All duly designated persons entering the Facility shall comply with the requirements of the Health and Safety Plan for the CMI Plan. If, however, the CMI Plan Health and Safety Plan is less stringent than the State's requirements regarding the health and safety of its employees, State representatives shall follow State requirements. During implementation of the CMI Plan, Roth Bros. shall provide the Department with suitable office space at the Facility, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Order and job meetings. Nothing in this provision shall be deemed consent by Roth Bros. to an inspection of the Facility for any purpose other than ascertaining compliance with this Order. Duly designated persons entering the Facility shall not interfere with Roth Bros.' operations except as necessary to ascertain whether and to ensure that Roth Bros. is in compliance with this Order.



IX. Payment of State Costs

A. After the end of each State fiscal year beginning with the end of the fiscal year for the year of the effective date of this Order, the Department shall submit to Respondent an itemized accounting of all reasonable costs incurred by the Department in connection with overseeing Roth Bros.' performance of its obligations pursuant to this Order, including the Department's review and revision of submittals made pursuant to this Order, ("Department Costs") during the previous one State fiscal year period.

B. Itemization of costs shall include an accounting of personal services indicating the employee name, title, bi-weekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by quarterly reports of Direct Personal Service. Approved fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by the New York State Office of the State Comptroller's quarterly expenditure reports.

C. Upon Respondent's request, the Department shall meet with Respondent to explain the accounting. Within sixty days of receipt of each annual accounting, Respondent shall remit a certified check to the Department which covers the full amount of Department Costs not to exceed \$22,000 for the fiscal year ending March 31, 1995, or \$12,000 for any fiscal year thereafter. Any dispute concerning the accounting or the amount of the payment requested by the Department shall be addressed under the procedures set forth in Paragraph VI-A, except that the amount in dispute shall not be due and payable until completion of the dispute resolution procedures. Any dispute resolution procedures must be commenced within sixty days of receipt of the annual accounting.

D. Payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, NYSDEC, 50 Wolf Road, Albany, NY 12233-7010.

E. The Department reserves its rights to recover any administrative costs not reimbursed pursuant to this Order.

X. Department Reservation of Rights

A. Except as otherwise provided in Subparagraph X(C) below, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's civil, criminal, or administrative rights or authorities.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

C. If, after review and using the criteria set forth in Paragraph II-A, the Department determines that soils in the vicinity of Plant 2 have been acceptably treated, the Department shall not bring any judicial or administrative action pursuant to Article 27, Title 9

to commit Roth Bros. or its successors and assigns to retreat soils previously acceptably treated pursuant to this Order; provided, however, that the Department specifically reserves all of its rights concerning any investigation and/or remediation the Department deems necessary due to:

(1) environmental conditions which are related to the release of hazardous wastes at the Site and were unknown to the Department at the time of its approval of the CMI Plan, or

(2) information received, in whole or in part, after the Department's approval of the CMI Plan,

and such unknown environmental conditions or information indicates that the soil treatment program undertaken pursuant to this Order is not protective of human health or the environment.

#### X-A. Violations of Order

The failure of Roth Bros. to comply with any provision of this Order, unless otherwise excused pursuant to the terms hereof, constitutes a violation of this Order and the ECL.

#### XI. Indemnification

Roth Bros. shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Roth Bros. and/or its directors, officers, employees, servants, agents, successors, and assigns, provided, however, that Roth Bros. does not assume any liability arising from the negligent or intentionally tortious acts or omissions of the Department, the State of New York, and their representatives and employees during the course of any activities conducted pursuant to this Order.

The Department shall not use Paragraph XI as a basis for seeking reimbursement of administrative costs incurred by the Department in overseeing Roth Bros. performance of its obligations pursuant to this Order.

#### XII. Public Notice

A. Within 60 days after the effective date of this Order, Roth Bros. shall file a Declaration of Covenants and Restrictions with the Clerk of the County wherein the Facility is located to give all parties who may acquire any interest in the Facility notice of this Order.

B. If Roth Bros. proposes to convey the whole or any part of Roth Bros.'s ownership interest in the Facility, Roth Bros. shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

C. Within 60 days following submission to the Department of the O & M Plan, Roth Bros. shall incorporate a notice in an instrument which would normally be examined in a title search for the Facility that will, in perpetuity, notify a potential purchaser of any portion of the Facility of the following: (i) the types, concentrations, and locations of hazardous wastes or hazardous constituents at the Facility, (ii) that all future uses of the property must be non-residential in nature, and (iii) that the CAMU's contaminated soils and the cover for the contaminated soils may not be removed without Department approval. Roth Bros. shall forward to the Department a copy of this notice within ten days of filing.

### XIII. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

Communication from Roth Bros. shall be sent to:

Steve J. Kaminski  
Division of Hazardous Substances Regulation  
New York State Dept. of Environmental  
Conservation  
50 Wolf Road  
Albany, New York 12233-7252

Steven P. Eidt, P.E.  
New York State Dept. of Environmental  
Conservation  
Region 7 Headquarters  
615 Erie Boulevard West  
Syracuse, New York 13204-2400

Dolores A. Tuohy, Esq.  
New York State Dept. of Environmental  
Conservation  
Division of Environmental Enforcement  
50 Wolf Road  
Albany, New York 12233-5500

Communication from the Department shall be sent to:

Neal Schwartz  
Roth Bros. Smelting Corp.  
6223 Thompson Road  
East Syracuse, New York 13057

The Department and Roth Bros. reserve the right to designate additional or different addressees for communications or written notices.

#### XIV. Miscellaneous

A. Roth Bros. shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Roth Bros. shall be submitted to the Department within five days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which Roth Bros. and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Roth Bros. shall rest solely with Roth Bros.

B. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Roth Bros. in complying with the Order and the Department also shall have the right to take its own samples. Upon the request of Roth Bros., the Department shall provide split or duplicate samples to Roth Bros. of any samples collected at the Facility by or on behalf of the Department. Roth Bros. shall make available to the Department the results of all sampling and/or tests or other data generated by Roth Bros. with respect to implementation of this Order and shall submit these results in the progress reports required by this Order.

C. Roth Bros. shall commence implementation of the CMI Plan in accordance with the schedule contained therein. Roth Bros. shall notify the Department at least 10 working days in advance of any other field activities to be conducted pursuant to this Order.

D. Roth Bros. shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary for Roth Bros. to perform its obligations under this Order.

E. The provisions of this Order shall be deemed to bind Roth Bros., its successors and assigns, and, as provided by law, its officers and directors. Any change in ownership or corporate status of Roth Bros. including, but not limited to, any transfer of assets or real or personal property shall in no way alter Roth Bros. responsibilities under this Order. Any change in ownership or corporate status of Roth Bros. including, but not limited to, any transfer of assets or real or personal property shall in no way alter Roth Bros.'s responsibilities under this Order. Roth Bros.'s officers, directors, employees, servants, and agents shall be instructed to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Roth Bros.

F. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.



G. All references to "days" in this Order are to calendar days unless otherwise specified. Any deliverables, notices or other written documents that under the terms of this Order would be due on a Saturday, Sunday, or a Federal or State of New York holiday shall be due on the following business day.

H. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

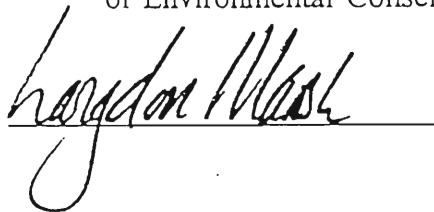
I. The terms of this Order shall constitute the complete and entire Order between Roth Bros. and the Department concerning the Facility. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Roth Bros. of Roth Bros.' obligation to obtain such formal approvals as may be required by this Order.

J. If Roth Bros. desires that any provision of this Order be changed, Roth Bros. shall make timely written application, signed by Roth Bros., to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Dolores A. Tuohy, Esq., and Steven J. Kaminski. If the modifications are approved, the modifications shall be attached to this Order.

K. The effective date of this Order shall be the date it is signed by the Commissioner or his designee.

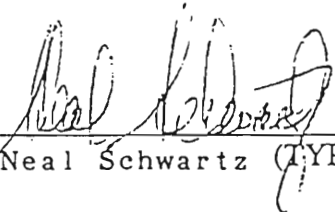
DATED: *Sydney*, New York  
*October 21*, 1994

LANGDON MARSH  
Commissioner  
New York State Department  
of Environmental Conservation

A handwritten signature in dark ink, appearing to read "Langdon Marsh", is written over a horizontal line.

CONSENT BY ROTH BROS. SMELTING CORP.

Roth Bros. Smelting Corp. hereby consents to the issuing and entering of this Order, waives Roth Bros.'s right to a hearing herein as provided by law, and agrees to be bound by this Order.

By:   
Neal Schwartz (TYPE NAME OF SIGNER)

Title: General Manager

Date: October 17, 1994

STATE OF NEW YORK )

) S.S.: -

COUNTY OF CLAY )

On this 17<sup>th</sup> day of OCTOBER, 1994, before me personally came NEAL SCHWARTZ, to me known, who being duly sworn, did depose and say that he resides in FAYETTEVILLE NY; that he is the GENERAL MANAGER of Roth Bros. Smelting Corp., the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation and that he signed his name thereto by like order.

  
Notary Public

THOMAS QUINN  
Notary Public in the State of New York  
Qualified in Onondaga County  
My Commission Expires 94

## APPENDIX C

This Order allows the Respondent to construct a Corrective Action Management Unit (CAMU) on its property.

This CAMU will hold approximately 21,000 tons of treated soil and be located 150 feet north of Plant 2. The dimensions of this unit are about 500 by 350 feet. This area is where much of the contaminated soil has been found.

Soil that has been treated with polysilicate and cement will be placed in the CAMU in designated cells as directed in the Department approved CMI. Although the treated soils will form a monolith, it will not be so solid as to preclude excavation with a backhoe for reprocessing or off-site disposal if any particular batch of treated soil fails the treatment standards after the curing process has ended and such action is deemed necessary.

This unit will then be closed according to the CMI Plan accepted on October 17, 1994, and any subsequent revisions approved by the Department.

The groundwater at the Facility will continue to be monitored during and after remediation according to the Groundwater Sampling and Analysis Plan dated December 1992, and accepted on April 13, 1993 and any subsequent revisions approved by this Department.